

DETAILED ACTION

1. This Office Action is in response to the amendment filed July 9, 2009. As directed by the amendment, claims 91-93, 96, 100, and 104-109 have been amended, claims 111-124 have been added and claims 94 and 97 have been cancelled. Thus, claims 91-93, 95-96, 98-124 are pending in this application.

Election/Restrictions

2. The newly amended claims 91-93, 96, 100, and 104-109 and previously presented dependent claims therefrom (95, 98-99, 101-103, and 110) as well as newly added claims 111-124 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

3. Originally presented claims 91-110 were drawn to an apparatus and method of using an apparatus comprising an appliance having at least one element being substantially bow shaped with the appliance at rest.

4. The newly amended claims 91-93, 96, 100, and 104-109 and previously presented dependent claims therefrom (95, 98-99, 101-103, and 110) as well as newly added claims 111-124 are directed to an apparatus and method of using an apparatus comprising an appliance comprising a relatively narrow, generally central body portion and terminating at relatively wide end portions adjacent the first and second ends. Applicant has pointed to figures 18-19 as providing support for the newly amended and newly presented claims; however, these figures are generally planar in structure when at rest. See: page 40, first full paragraph of applicant's specification.

The species are independent or distinct because as disclosed the different species have mutually exclusive characteristics for each identified species. In addition, these species are not obvious variants of each other based on the current record.

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 91-93, 95-96, 98-124 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The election of the species has been made by original presentation; however, to preserve a right to petition, the election must be made with traverse. If a reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

Response to Amendment

5. The amendment filed on July 9, 2009 effectively canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because none of the remaining claims require at least one element being substantially bow shaped with the appliance at rest.

Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CLINTON OSTRUP whose telephone number is (571)272-5559. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Clinton Ostrup/
Examiner, Art Unit 3771

/Edward K. Look/
Supervisory Patent Examiner, Art Unit 3745